

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LAWRENCE L. SHULTS,

Petitioner,

vs.

JAMES BENEDETTI, *et al.*,

Respondents.

3:09-cv-00699-RCJ-VPC

ORDER

This is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which petitioner, a state prisoner, is proceeding *pro se*. On March 24, 2011, the court dismissed the petition as untimely and successive. (ECF No. 17.) Before the court is petitioner's motion for reconsideration. (ECF No. 19.)

Where a ruling has resulted in final judgment or order, a motion for reconsideration may be construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), *cert. denied* 512 U.S. 1236 (1994). Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or

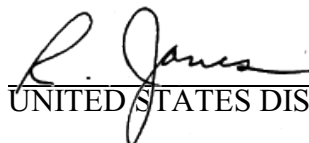
1 discharged, or a prior judgment upon which it is based has been reversed
2 or otherwise vacated, or it is no longer equitable that the judgment should
3 have prospective application; or (6) any other reason justifying relief
4 from the operation of the judgment.

5 Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick*
6 *Garin Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a
7 party must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior
8 decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986),
9 *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9th Cir. 1987). Rule 59(e) of the Federal
10 Rules of Civil Procedure provides that any "motion to alter or amend a judgment shall be filed no later
11 than 28 days after entry of the judgment." Furthermore, a motion under Fed. R. Civ. P. 59(e) "should
12 not be granted, absent highly unusual circumstances, unless the district court is presented with newly
13 discovered evidence, committed clear error, or if there is an intervening change in the controlling law."
14 *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir. 2001) (quoting *McDowell v. Calderon*, 197 F.3d 1253,
15 1255 (9th Cir. 1999)).

16 Here, petitioner has failed to make an adequate showing under either Rule 60(b) or 59(e) that this
17 court's order dismissing the petition as untimely and successive should be reversed. In his motion,
18 petitioner has not identified any mistake, intervening change in controlling law, or other factor that
19 would require vacating the judgment. Petitioner has not shown that manifest injustice resulted from
20 dismissal of the action. Petitioner also has not presented newly discovered or previously unavailable
21 evidence. Accordingly, petitioner's motion for reconsideration of the order dismissing his petitioner as
22 untimely and successive is denied.

23 **IT IS THEREFORE ORDERED** that plaintiff's motion for reconsideration (ECF No. 19) is
24 **DENIED.**

25 Dated: This 14th day of March, 2012.

26 
UNITED STATES DISTRICT JUDGE